conclude wrongly that second plaintiff was largely to blame, or indeed, responsible for any share of the blame at all.

We can best avoid the hazards of examining that part of his judgment under attack out of context by setting out hereunder in full what comes both before and after his examination of the significance of the scratch marks at J and K: —

"The sketch plan gave a clearer picture of what happened. It showed that after the accident the defendant's lorry was straddling across the centre of the road facing diagonally towards Pekan with its front half in the plaintiff half and its rear half in its own side of the road. There were two distinct brake marks at its rear immediately to the nearside and offside at a distance of 49 feet and 53 feet 4 inches respectively. They ran in a straight line parallel to one another and also to the centre line on the defendant's own side. There were no scratch marks found on the plaintiff's side of the road but there were two scratch marks found at J and K on the defendant's side just slightly on the left of the centre. These ground evidence went merely thus to support the defendant's case and rebut the plaintiff's case that the accident happened on the plaintiff's wrong side. According to the defendant the collision took place to the rear of the lorry on the defendant's side at point I where the road surface was shown to be torn. The parallel tyre marks which ran on the same side of the plaintiff merely supported the defendant's case that he was at all relevant times on his correct side. That the front portion of the lorry was found to be on the plaintiff's side would not necessarily indicate he had been at fault. According to the defendant it was due to the steering being jammed. From the evidence adduced there was nothing to show that that result was not probable. Clearly this could not be the position in which the defendant was at the moment of impact, otherwise it was difficult if not impossible to explain how at the same time the defendant's brake marks were found to be on the defendant's side and parallel to the centre necessarily indicating that before and at the time of the impact he had travelled correctly on his side of the road. If this was not the case then we would expect the brake marks to be in line with the position in which the front half of the lorry was facing.

The plaintiff said that the accident happened on his side of the road that is, on the defendant's wrong side but never in the sketch was there, however, anything to suggest that this was so. In fact all the evidence, other than the fact that the front portion of the lorry was found to be on the plaintiff's side, (which situation was discussed earlier) were found to be on the defendant's side strongly supporting the defendant's case that at the time of the collision, the plaintiff was encroaching on his path in attempting to overtake another motor cycle. It is to be wondered thus whether the plaintiff had even established a prima facie case against the defendant. How could he have done so when the second plaintiff said he did not see anything before the accident? In other words he did not know how the accident happened. Was the second plaintiff therefore saying because he said he was on the correct side at the relevant time, therefore the inference must be drawn that the defendant had knocked on his side? That would be too much an inference for the court to come to. All things being equal, that might be the necessary conclusion to be drawn but where on the contrary tangible evidence indicated that the accident took place on the defendant's side, how could such an inference ever be drawn?"

In short what influenced the trial judge most, and we respectfully agree with him, were the brake or tyre marks clearly resulting from the violent braking of respondent's lorry, shown as parallel lines on the sketch plan. These brake marks he found corroborated respondent's testimony that he was at all relevant times on his correct side of the road, and also made probable that respondent's version of how the front of his vehicle had come to straddle the centre of the road.

We would also agree that the inferences that the scratch marks I and J were probably made by the plaintiff's motor cycle being dragged after impact at point I is a logical consequence of the probability established by the brake marks i.e. that respondent's lorry had been on its correct side of the road at the moment of impact. Accordingly the appeal on this ground should also fail.

We were referred to the Braking Tests tables on page 106 of *Bingham's* Motor Claims Cases 7th Edition by learned counsel for the respondents to support his cross-appeal on the ground that the trial judge had erred in finding that respondents had contributed to the accident by travelling at more than 35 m.p.h.

There was no evidence, apart from the photographs, as to the nature of the road surface. But we believe everyone, including the learned judge, rightly assumed that the accident took place on an asphalt surface. Similarly, there being no evidence to the effect that the road was wet, the assumption seems to be that it was dry at relevant times. The brake marks on the sketch plan would average at 51', which according to the braking tables would place the speed of the vehicle somewhere between 30 to 35 m.p.h. Though the trial judge arrived at a figure of more than 35 m.p.h., a speed of even say 33 m.p.h. would be unreasonable in the condition of poor visibility for a heavy vehicle travelling at well nigh its maximum permissible speed. We would therefore dismiss both the appeal and cross-appeal with costs.

Appeal and cross-appeal dismissed.

Solicitors: *Mahinder & Co.; Cheang Lee & Ong.*

BHANDULANANDA JAYATILAKE v. PUBLIC PROSECUTOR

[F.C. (Raja Azlan Shah Ag. L.P., Salleh Abas & Abdul Hamid F.JJ.) September 23, 1981]

[Kuala Lumpur — Federal Court Criminal Appeal No. 33 of 1981]

Criminal Law and Procedure — Sentence — Giving false evidence — Public interest — Penal Code, s. 194.

This was an appeal from the decision of Ajaib Singh J. reported in [1981] 2 M.L.J. 354. The appellant had pleaded guilty to giving evidence at a murder trial and was convicted and sentenced to 10 years' imprisonment.

Held: (1) it had not been shown that the learned Judge had embarked on any unauthorised or extraneous or irrelevant exercise of discretion and the appellate court should not therefore interfere with the sentence;

(2) the learned trial judge was justified in outweighing the plea of mitigation in favour of the public interest with a desire to uphold the dignity and authority of the law in this country.

Cases referred to:-

(1) *Jamieson* v. *Jamieson* [1952] A.C. 525, 549.

(2) *Attorney-General* v. *British Broadcasting Corporation* [1980] 3 All E.R. 161, 172.

FEDERAL COURT.

Y. Sivaloganathan for the appellant.

Shaikh Daud (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah Ag. L.P. (delivering the judgment of the Court): The appellant gave false testimony at the murder trial of Karthigesu who was convicted and sentenced to death. That case rested on the appellant's testimony which provided the main link in the largely circumstantial evidence tendered by the prosecution. The conviction and sentence were set aside by this court when the appellant confessed on oath that he had told lies at that murder trial. He was duly charged and convicted of 'giving false evidence with intent to procure Karthigesu's conviction of a capital offence' under section 194 of the Penal Code. That particular offence carries a maximum sentence of 20 years and a fine. The learned judge imposed a sentence of 10 years imprisonment.

It is now said before us that that sentence was wrong; that it was harsh and manifestly excessive. Therefore this court should interfere because every wrong sentence is as much a miscarriage of justice as a wrongful conviction or acquittal.

In our view to give false testimony in a capital case is a very serious thing to do because it can jeopardise the life of the accused. It is for that reason that the Penal Code has provided a separate section to deal with the matter. The learned judge has dealt with it, we think, admirably and incisively in these terms:

"Witnesses giving evidence in court must never underrate the importance of speaking the truth.... True testimony alone will assist the court in arriving at a true verdict. It is most important therefore that people who appear as witnesses in court should never deviate from the truth for otherwise they would be polluting the administration of justice and thus committing a serious wrong to the court and society."

In another passage of his judgment he said this:

"...the offence of judicial perjury which the accused has committed is of such a grave nature involving the risk of human life that public interest must outweigh the plea of mitigation...."

It cannot be gainsaid that the appellant had shown a wanton disregard for truth. The sanctity of an oath meant nothing to him. We therefore conclude that he had acted with malice and with the direct object of bringing the administration of justice into disrepute.

Is the sentence harsh and manifestly excessive? We would paraphrase it in this way. As this is an appeal against the exercise by the learned judge of a discretion vested in him, is the sentence so far outside the normal discretionary limits as to enable this court to say that its imposition must have involved an error of law of some description? I have had occasion to say elsewhere, that the very concept of judicial discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. That is quite inevitable. Human nature being what it is, different judges applying the same principles at the same time in the same country to similar facts may sometimes reach different conclusions (see *Jamieson* v. *Jamieson*[1]). It is for that reason that some very conscientious judges have thought it their duty to visit particular crimes with exemplary sentences; whilst others equally conscientious have thought it their duty to view the same crimes with leniency. Therefore sentences do vary in apparently similar circumstances with the habit of mind of the particular judge. It is for that reason also that this court has said it again and again that it will not normally interfere with sentences, and the possibility or even the probability, that another court would have imposed a different sentence is not sufficient, *per se*, to warrant this court's interference.

For a discretionary judgment of this kind to be reversed by this court, it must be shown to our satisfaction that the learned judge was embarking on some unauthorised or extraneous or irrelevant exercise of discretion. We are far from convinced that any criticism of the learned judge is warranted. He took the course he did, in outweighing the plea of mitigation in favour of the public interest with a desire to uphold the dignity and authority of the law as administered in this country. We agree. That must receive the greatest weight. It is a serious offence to give false testimony, for it is in the public interest that the search for truth should, in general and always, be unfettered. The courts are the guardians of the public interest (see the *Exclusive Brethren* case[2]).

The appeal is dismissed.

Appeal dismissed.

Solicitors: *S.M. Ratnam.*

CHUA EH SWEE v. SEW CHEW ENG & ANOR.

[O.C.J. (Mohamed Zahir J.) January 11 & May 20, 1981]
[Kota Bharu — Civil Suit No. 30 of 1977]

Small Estates — Collector to hear cases only where grant of Letters of Administration by authority other than High Court — Scope of s. 27(1) & (2), Small Estates (Distribution) Act, 1955.

The plaintiff claimed that the land originally belonged to the estate of one Khor Mak Inn, deceased, and the second defendant was appointed administrator under the Small Estates (Distribution) Act by the Collector. The plaintiff was the daughter of Khor Mak Inn. She alleged that the 1st defendant in complicity with the 2nd defendant on November 24, 1966 represented to the Collector that she was a purchaser of the land to the extent of 5/6th share and as a result such 5/6th share was ordered by the Collector to be transferred into the name of the first defendant thus depriving the plaintiff of her rightful shares. The defendants pleaded *res judicata*.

Held, allowing the plaintiff's claim: (1) the Collector could only hear cases where the grant of letters of administration was by an authority other than the High Court (section 27(1) & (2) of the Small Estates (Distribution) Act 1955);

(2) even though the plaintiff was present at the hearing before the Collector and submitted herself to his jurisdiction and even though she did not lodge an appeal against the order of the Collector, all those factors would not vest in the Collector the authority to hear the application for distribution. His action would be *ultra vires*, except in cases where the plaintiff's action is statute-barred and plea of limitation is pleaded by the defendant, which in this case was not so pleaded;

(3) the order of distribution by the Collector of November 24, 1966 was null and void and any registration in the said title lot entered in pursuance of such order must be revoked and expunged from record;

(4) the 1st defendant should apply to the court for distribution of the estate of the deceased.